No. 19-404

IN THE

Supreme Court of the United States

DAVID SETH WORMAN, ET AL.,

Petitioners,

v.

MAURA T. HEALEY,
ATTORNEY GENERAL OF MASSACHUSETTS, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF OF *AMICUS CURIAE* COMMONWEALTH SECOND AMENDMENT, INC. IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE[1]

Commonwealth Second Amendment, Inc. (hereafter, "Amicus" or "Comm2A") is a Massachusetts based, non-profit organization dedicated to preserving and expanding the Second Amendment rights of individuals residing in New England and beyond. Comm2A works locally and with national organizations to promote a better understanding of the rights guaranteed by the Second Amendment to the United States Constitution. Comm2A has substantial expertise in the field of Second Amendment rights that would aid the Court. The Court's ruling in the current case affects Amicus Comm2A's organizational interests, as well as those of its contributors and supporters, some of whom are directly affected by the law at issue in this case and who wish to enjoy the full exercise of their fundamental Second Amendment rights.

STATEMENT OF THE CASE

Amicus references and incorporates the statement of the case by Petitioners, providing below a brief summary of elements relevant to this brief. The Commonwealth of Massachusetts bans, through Mass. Gen. Laws, ch. 140, §131M (2014), the possession of arms commonly possessed by the law

[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae*, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief and they have received or waived appropriate notice.

abiding for lawful purposes. On July 26th, the Attorney General for the Commonwealth of Massachusetts issued an "enforcement notice" further expanding the scope of §131M to include arms regularly on the market in Massachusetts for more than 20 years. Petitioners filed the underlying action challenging the enforcement notice and the underlying statute on grounds that both violate the Second Amendment to the United States Constitution.

INTRODUCTION

Amicus Commonwealth Second Amendment respectfully urges that the court grant certiorari in this case to clarify and resolve the definition of what arms are protected under the Second Amendment to the United States Constitution or at a minimum, clarify that the two step analysis "test" for Second Amendment cases first articulated in United States v. Marzzarella, 614 F.3d 85 (2010), is not faithful to the test articulated in Heller for determining the constitutionality of regulations implicating the Second Amendment. The two-step analysis has been abused by courts throughout the country to hold constitutional all manner of restrictions on conduct implicating the Second Amendment, some of which having little to no direct connection to preventing violence or other legitimate government function.

As this brief will show, the imminent criminal liability Massachusetts gun owners now face has become unforgivable, the result of the craven re-interpretation of the statute by Massachusetts Attorney General Healey. The people affected by this action are those who reasonably believed that they were following the law when purchasing/possessing

firearms commonly possessed by the law-abiding for lawful purposes.

Lastly, given the reticence of courts around the nation to apply Heller correctly in reviewing statutes relevant to the rights of gun owners, there is no actual choice people can make when faced with attempting to adhere to vague and overbroad laws that can change on the whim of a prosecutor. They basically don't follow them, either by simply not engaging in constitutionally protected activity altogether or ignoring the laws completely. Neither of which is a tenable solution, but both of which serve the interests of those looking to stifle and squelch the exercise of a fundamental right.

SUMMARY OF ARGUMENT

Lower Courts have been applying an analysis to Second Amendment claims that differs substantially from the analysis articulated in Heller. This has led to outcomes where statutes regulating weapons have been reviewed under rational basis, or similar levels of scrutiny, on the theory that the conduct proscribed by the statutes in question is not covered by the Second Amendment.

The changes made to Mass. Gen. Laws, ch. 140, §131M via the Massachusetts Attorney General's enforcement notice have all but assured that under the two-step analysis test that Mass. Gen. Laws, ch. 140, §131M can be used to affect ex post facto confiscation and convictions of gun owners who genuinely believed they were complying with the law as written.

In addition to needing clarification on the two-step analysis currently being employed by lower

courts is inaccurate, an objective test for what arms are covered under the Second Amendment would make it easier for lower courts to engage in review statutes implicating protected conduct consistently across the country. To that end, Amicus provides an example objective test that is faithful to the test laid out in Heller.

ARGUMENT

Mass. Gen. Laws, ch. 140, §131M and related statutes are an identical copy or duplicate, through reference, of the now expired "Public Safety and Recreational Firearms Use Protection Act" sub-section of the 1994 "Violent Crime Control and Law Enforcement Act of 1994"[2] (94 AWB). In 2004,[3] §131M was updated to make explicit the connections to the then still active 94 AWB.[4] From 1994 until 2016, Massachusetts gun owners were generally on notice as to what the statute said.

On July 20, 2016 Massachusetts Attorney General Healey released, at a press conference replete with a seeded article in the Boston Globe,[5] an enforcement notice declaring from that moment on, §131M would be interpreted in such a way as to make just about any semiautomatic firearm illegal

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[2] VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994, 1994 Enacted H.R. 3355, 103 Enacted H.R. 3355, 108 Stat. 1796.

[3] 2004 Mass. ALS 150, 2004 Mass. Ch. 150, 2003 Mass. S.B. 2367.

[4] 18 U.S.C. § 921(a)(30) expired in 2004 after failing to be renewed by Congress.

[5] https://www.mass.gov/files/documents/2018/11/13/globe-op-ed.pdf (Last Visited 10/23/2019).

in the Commonwealth of Massachusetts. Attorney General Healy declared via fiat that her office would consider the terms "copies" or "duplicates" of the enumerated list of banned firearms to mean, in complete defiance of the plain meaning of those terms, as "Similarity" or [parts] "Interchangeability."[6] The so-called "enforcement notice" is not a regulation, nor is it an official opinion of the Attorney General. A notice in this form declaring possession of arms designed to not fall under §131M otherwise illegal would assist in leveraging Mass. Gen. Laws ch. 93A to shut down all commercial sales. Mass. Gen. Laws c. 93A is a consumer protection statute of the same type as central to Remington Arms Co. v. Soto, Petition for Writ of Ceriorari No. 19-168 (Aug 1, 2019 S. Ct.). Possession by a prospective buyer being illegal is prima facia evidence of an unfair business practice under harm to buyer, a practice confirmed by Am. Shooting Sports Council v. AG, 429 Mass. 871, 882 (1999), where Mass. Gen. Laws ch. 93A authorizes "[consumer protection regulations that] coordinate[] G. L. c. 93A liability with legislation declaring certain acts unlawful."

The enforcement notice was later "clarified"[7] with language referencing the Approved Weapons

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[6] See https://www.mass.gov/files/documents/2016/08/pr/assault-weapons-enforcement-notice.pdf. (Last visited 10/23/19).

[7] See https://www.mass.gov/guides/frequently-asked-questions-about-the-assault-weapons-ban-enforcement-notice#-are-there-examples-or-categories-of-weapons-that-are-not-copies-or-duplicates-of-assault-weapons?- (Last Visited 10/23/2019) and Pullman Arms, Inc. v. Healey, No. 16-40136-

Roster, et al., some of which is not found in the statute exempting guns from §131M's scope. For instance, a Walther PPK has a nearly identical recoil system[8] to the banned Semi-Automatic M-11 and M-12,[9] uses the same cartridge, and is clearly caught by the Similarity Test. However, since it's on the Approved Weapons Roster[10], the Attorney General, by fiat, exempted it from the enforcement notice, again despite any statutory language in §131M allowing for such exemption.

This dubious enforcement notice essentially applies the Ordinary Observer Test[11] to the term "copies or duplicates" by eschewing the English language definition of the words copy[12] and

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TSH, 2019 U.S. Dist. LEXIS 136061, at *3 (D. Mass. Aug. 13, 2019).

[8] Straight blowback, which the vast majority of arms chambered in .380 ACP use.

[9] The statute refers to the SWD M-10, M-11, etc.; which is a later variant of what is known as the Mac-10, Mac-11, etc.; Note that all these variants of these guns fail the clear to understand "features" test of the statute, so their inclusion on the enumerated list is redundant.

[10] See Mass. Gen. Laws ch. 140, §123.

[11] The *sine qua non* of the ordinary observer test, however, is the overall similarities rather than the minute differences between the two works. Atari, Inc. v. N. Am. Philips Consumer Elecs. Corp., 672 F.2d 607, 618 (7th Cir. 1982).

[12] Copy: an imitation, transcript, or reproduction of an original work; one of a series of a series of especially mechanical reproductions of an original impression; (https://www.merriam-webster.com/dictionary/copy Last Visited: 10/23/2019).

duplicate.[13] In order to ameliorate the inherent unfairness of such a move, the enforcement notice included a statement that Attorney General Healey had no intention of prosecuting anyone who purchased a now banned firearm prior to the enforcement notice date. This is not a grant of immunity but a mere promise, revocable at any time, by anyone with powers to enforce the criminal laws of the Commonwealth.

It would stand to reason that language swapped out wholesale converting the meaning of a statute would ensure a clear rebuke from the courts, preventing such a miscarriage of justice. But reason is in short supply in Second Amendment jurisprudence. While there is never a guarantee of justice for someone charged with any crime, much less civil litigants, take for instance the case of Morin v. Leahy, 862 F.3d 123 (1st Cir. 2017) where the First Circuit leveraged dicta from Commonwealth v. Powell, 459 Mass. 572 (2011)[14] and interpreted state law contrary to the plain language of the statute in holding that an FID card was sufficient for possession of a handgun in the home, where only place Mass. Gen. Laws Ch. 140, § 129B permits possession of a handgun is "under a Class A license issued to a shooting club as provided

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[13] Duplicate: consisting of or existing in two corresponding or identical parts or examples; being the same as another; (https://www.merriam-webster.com/dictionary/duplicate Last Visited: 10/23/2019).

[14] Defendant Powell was not in the home when found with a firearm, so the applicability of the FID was irrelevant to his claim, and he was too young to qualify for the license he did need, the LTC. See Mass. Gen. Laws ch. 140, §§129B, et seq.; and §131.

under section 131 or under the direct supervision of a holder of a Class A or Class B license issued to an individual under section 131 at an incorporated shooting club or licensed shooting range."

There can be little question of why the Enforcement Notice relies heavily on copyright and patent law principles. "The test for infringement of a copyright is of necessity vague." Peter Pan Fabrics, Inc. v. Martin Weiner Corp., 274 F.2d 487, 489 (1960). It would then hold that vagueness would be an appropriate reasoning in challenging the application of the Enforcement Notice to a prosecution of §131M, ie; that the enforcement notice language creates vagueness in the statute, if the terms "copy" or "duplicate" can be twisted to mean similar or interchangeable. However the court in Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp. 2d 666 (1999) held NJ's assault weapon statute was **not** impermissibly vague when it used the term "substantially identical" as applied to a list of enumerated arms. The court in Coal. of N.J. Sportsmen, Inc. v. Whitman further elucidated "that virtually identical language in the City of Columbus' assault weapons ban law was [found] void for vagueness." Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp. 2d 666, 681 (1999),[15] but further confirmed that the:

> courts invalidated Columbus' assault weapons law based upon a heightened standard of review, which [this Court] will not apply in this facial vagueness

[15] See also: Peoples Rights Org. v. City of Columbus, 925 F. Supp. 1254 (1996) and Peoples Rights Org. v. City of Columbus, 152 F.3d 522 (1998).

> challenge. For the reasons explained…, this court does not believe that a heightened level of scrutiny should apply to this facial challenge of a criminal law, especially when the statute neither reaches significant constitutionally protected conduct, nor provides unfettered discretion to "policemen, prosecutors, and juries to pursue their personal predilections." Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp. 2d 666, 681 (1999).

Therein lies the element most indicative of the problems facing those in court bringing Second Amendment claims. The 2A Two Step analysis yields a decision that the arms in question in the case are not protected by the constitution,[16] therefore the analysis of whether or not the statute infringes on constitutionally protected activity is subjected to minimal standards of review. For an example of this in Massachusetts:

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[16] The assault weapon statute Mass. Gen. Laws, ch. 140, §131M, also is not prohibited by the Second Amendment, because the right "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes." Heller, 554 U.S. at 625. The Second Amendment does not grant "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." A ban on assault weapons is more similar to the restriction on short-barreled shotguns upheld in United States v. Miller, 307 U.S. 174, 178, 59 S. Ct. 816, 83 L. Ed. 1206, 1939-1 C.B. 373 (1939), than the handgun ban overturned in Heller. Commonwealth v. Cassidy, 479 Mass. 527, 540 (2018). *Internal citations removed.*

> We hold that, because § 131L (a) [storage statute] is consistent with the right to bear arms in self-defense in one's home and is designed to prevent those who are not licensed to possess or carry firearms from gaining access to firearms, it falls outside the scope of the Second Amendment. As a result, it is subject only to rational basis analysis, which it easily survives. Therefore, we conclude that § 131L(a) is constitutional under the Supreme Court's holdings and analysis in Heller and McDonald, and that Massachusetts may enforce § 131L (a) to protect the health, safety, and welfare of its citizens. Commonwealth v. McGowan, 464 Mass. 232, 244 (2013).

Combined with the analysis in Commonwealth v. Reyes, 464 Mass. 245 (2013), et al.; these decisions support a criminal access standard[17] to securing

[17] Meaning that the storage requirements to comply with the statute rise to level of preventing sane adults intentionally accessing the arm, not just accidents or prevention of minors accessing arms as articulated in Heller. See: "Its legislative history leaves no doubt that [Mass. Gen. Laws, ch. 140, §131L] was intended to prevent accidental injuries and deaths resulting from firearms falling into the hands of children and other unauthorized users, by criminalizing negligent storage." Commonwealth v. Reyes, 464 Mass. 245, 250-51, 982 N.E.2d 504, 509-10 (2013).

"The prevention of accidents by those not authorized to use firearms, as well as the prevention of crimes of violence and suicide by those not authorized to possess firearms, are among the evils that §131L(a) is intended to prevent." Commonwealth v. McGowan, 464 Mass. 232, 243, 982 N.E.2d 495, 503 (2013). Commonwealth v. Patterson, 79 Mass. App. Ct. 316, 319, 946

guns that "must be maintained in locked containers in a way that will deter all but the most persistent from gaining access." Commonwealth v. Reyes, 464 Mass. 245, 252 (2013) quoting Commonwealth v. Parzick, 64 Mass. App. Ct. 846, 852 (2005).

Because the law allows one to have an operable gun on their person or under their "direct control" (not defined in statute), everyone, including those who live alone, must never have an unsecured gun while not on their person or under "their direct control." This leads to a gun in locked car becoming insufficient Commonwealth v. Reyes, 464 Mass. 245 (2013) to "prevent accidents" District of Columbia v. Heller, 554 U.S. 570, 632 (2008). Those who need to shower, sleep at night, enjoying swimming in a backyard pool, etc.; will have to lock up their guns as none of those things are explicitly constitutionally protected, nor is storing a gun in one's home constitutionally protected either, as per the analysis in Commonwealth v. McGowan, et al.

In City of Seattle v. Evans, 184 Wash. 2d 856 (2015) the defendant's conviction for carrying a fixed blade knife (the statute forbids carrying **any** fixed blade knife) City of Seattle v. Evans, 184 Wash. 2d 856, 860 (2015) was upheld because the kitchen knife he possessed was not originally designed to be an "arm," so there was no Second Amendment protection for the defendant's conduct of carrying a fixed blade knife in a backpack. In other words, the statute in question forbidding the carrying of **any** fixed blade knife, ostensibly justified because the

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N.E.2d 130 (2011) (purpose of storage statute is to guard against use of firearms by "unauthorized, incompetent, or irresponsible persons").

knives can be used as weapons, survives under rational basis since the knife in question isn't a "weapon" for purposes of justifying a heightened analysis under the Second Amendment. Given most knives (not to mention, guns) have dual/multi use, this type of analysis all but ensures courts avoiding applying heightened scrutiny towards implicated statutes.

This small sample of cases illustrate how the two-step analysis applied to statutes implicating acts ostensibly covered by, or related to, the Second Amendment allows courts to apply lower levels of scrutiny when evaluating the constitutionality of said statutes. These laws typically forbid the possession/carrying of all or particular types of weapons for use in self-defense.

It is no small secret that some courts, though not all, around the country are thumbing their nose at the Second Amendment,[18] but the costs of this are severe as legislatures, purely political entities, have now been given a third party (the courts) to blame for all things weapons and violence related. The breadth of state level statutes passed since 2010[19] has been stunning and reflects a cold political calculus by the political branch to pass it and let the courts sort it out.

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[18] "If a lower court treated another right so cavalierly, I have little doubt that this Court would intervene. But as evidenced by our continued inaction in this area, the Second Amendment is a disfavored right in this Court." Silvester v. Becerra, 138 S. Ct. 945, 945 (2018).

[19] 2013 Bill Text NY A.B. 6094, 2017 Bill Text MA H.B. 4670, etc.

The above marks the environment that any attorney, multiplied by tens of thousands of Massachusetts gun owners, sitting across the table from a client will be operating under when providing advice to their client, charged under Mass. Gen. Laws ch. 140, §131M, about the decision to take the case to trial or take a possible plea deal.[20] These attorneys will be forced to advise to either plead to a charge all but ensuring a loss of substantial rights due to felony conviction or litigate their case after a trial in an environment that all but assures claims of constitutional deficiencies in statutes related to firearms will be scrutinized at the lowest level possible, essentially ignoring the constitutional protection outline in the Second Amendment.

AN OBJECTIVE TEST FOR CONSTITUTIONALLY PROTECTED ARMS

In the absence of an objective categorical test for what arms are protected under the Second Amendment, courts will continue to apply means-end testing despite Heller's clear warning to the contrary District of Columbia v. Heller, 554 U.S. 570, 634 (2008), that the "very enumeration of the right takes out of the hands of government--even the Third Branch of Government--the power to decide on a case-by-case basis whether the right is really worth insisting upon." Ibid.

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[20] The Sixth Amendment guarantees a defendant the effective assistance of counsel at "critical stages of a criminal proceeding," including when he enters a guilty plea. Lafler v. Cooper, 566 U.S. 156, 165 (2012); Hill v. Lockhart, 474 U.S. 52, 58, 59, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985). Lee v. United States, 137 S. Ct. 1958, 1964 (2017).

In recognition that this court relies on the percolation of ideas from lower courts[21] to exercise its Article III powers in a measured and just manner, amicus Comm2A provides the below for the courts benefit in determining how best to determine what arms are protected by the Second Amendment. The below proposes an objective test that does not rely on a subjective or relative measure for determining arms that are covered under the Second Amendment. This test could reasonably be called the Discrete Action, Discriminate Effect test (hereafter referred to as the Discrete Test). The Discrete Test simply states that any arm where the discrete action of a user results in a discriminate effect on a single target is constitutionally protected under the Second Amendment. Heller supports this categorical approach by both rejecting "freewheeling interest-balancing" ibid. while also making clear that "if weapons that are most useful in military service--M-16 rifles and the like--may be banned…" Ibid. at 627. In practice, this would suggest that weapons that allow a user to engage in a single action, ie; trigger pull, and have multiple effects on a single or multiple targets, or multiple rounds discharged with that single trigger pull, the arm can be subject to regulations far greater than those more suited for self-defense. If so, then the inverse must be true. Arms that will have a discriminate singular effect on the target per the discrete singular action of operating the weapon (ex; pulling the trigger), would be considered protected under the Second Amendment.

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[21] Clark, Kastellec, The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model, The Journal of Politics, Vol. 75, No. 1, January 2013, pp. 150–168.

Some examples of arms that would fail this test are anything designed with explosives to radiate energy and/or material from the locus of combustion. A hand grenade would fail this test, as would an RPG, Bazooka, and similar arms. An example that is less *Reductio ad absurdum* is flash bangs, or otherwise known as a stun grenade. This type of device has an indiscriminate effect on the surroundings of it's target. It is not an adequate self-defense item.

Other examples of "arms" that would not be covered[22] are bio and nuclear weapons, booby traps, and any sort of energy dissipating weapon that radiates energy beyond the size of a man-sized target within its effective range as none of these are discrete in their targeting nor in their impact/effect on individuals coincident of the intended target.

One example of weapons technology that can straddle the two ends of the Discrete Action test is pepper spray or oleoresin capsicum (OC). By itself, it can be an aerosol, wet or dry, and in a confined space effect large numbers of people, say if spread through the ventilation system of a building. But when combined with a gel, or other binding agent, this becomes an effective less-lethal self-defense tool that targets the agent at a specific individual.

Another example of technology that straddles both protected and unprotected classes is sonic weaponry used by police and military[23] that allows

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[22] Not that the succeeding list are all arms by definition per se, but they can clearly be considered weapons in some form or another.

[23] https://genasys.com/products/long-range-acoustic-devices/ (Last visited 10/23/19).

for sound to be directed at groups of protestors to temporarily incapacitate them. But a smaller, directed version of such weapon employing the same technology directed into the target size of a human being may well be covered under this test.

Applied to firearms, any arm that operated by expelling a single bullet by way of a single pull of the trigger would be protected by the Second Amendment under this test. As would knives, contact weapons, and more importantly directed energy weapons such as tasers, lasers, and any future technology not yet conceived or developed that could be targeted to a reasonably small, distinct and discriminate human sized target.

The only caveat with the Discrete Test approach is what is known as "over penetration," whereby the projectile penetrates the intended target and continues on to impact another, possibly unintended target. Over penetration has been a problem for weapons designers, those using the weapons and for those targeted by weapons since at least the founding of this nation.[24] In short, weapons designers want as little over penetration as possible in order to transfer the kinetic energy of the projectile to the target, but enough penetration to

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[24] See Rule #2 of the original 28 Rogers's Rules of Ranging, as written by Major Robert Rogers, Kings Rangers in 1757 http://www.rogersrangers.org/rules/index.html. (Last visited 10/23/19). These rules are still in use today by the US Army Rangers and the march rules is codified as rule #6 of the current standing orders of the US Army Rangers (https://fas.org/irp/doddir/army/ranger.pdf). (Last visited 10/23/19) See also https://www.army.mil/ranger/heritage.html (Last visited 10/23/19) and https://www.army.mil/article/33174/the_rules_of_ranging. (Last visited 10/23/19).

reach deep enough into the target to reach vital organs.[25] Given the history and tradition of the use of arms, that an arm can over penetrate in some cases under some circumstances, while under penetrate in other cases under other circumstances, should be seen as well within the nature of arms capable of deadly force as understood at the time of the founding of this country.

The Discrete Test approach approximates the characteristics of arms that are useful for self-defense, a principle that is embedded in the Common Use doctrine laid out in Heller. Those engaging in self-defense "[are] privileged to use such force as reasonably appears necessary to defend him or herself against an apparent threat of unlawful and immediate violence from another.[26]" Arms that operate in a manner that focus force on specific individuals engaging in unlawful and immediate violence are arms that are suitable for self-defense. Categorical bans of arms that are suitable for self-defense, regardless of how they can be abused, should not be upheld. The statutes at question in Massachusetts move well beyond a level of regulation comporting to a constitutionally protected right.

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[25] https://www.hornady.com/team-hornady/ballistic-calculators/ballistic-resources/terminal-ballistics (Last visited 10/23/19).

[26] George E. Dix, Gilbert Law Summaries: Criminal Law xxxiii (18th ed. 2010) (original emphasis); see generally David C. Brody & James R. Acker, Criminal Law 130 (2014).

CONCLUSION

The July 2016 action by Attorney General Healy has created an urgent need for review of these statutes by this court. Applying the logic and tests in the enforcement notice, in combination with Massachusetts's transaction tracking requirement,[27] has created a situation where tens of thousands of Massachusetts gun owners, previously believing they were complying with the law, have now provided notice to the Commonwealth that they are in possession of firearms now considered illegal by the Commonwealth and conveniently where to find them. A violation of this statute has a one (1) year minimum in prison and is a lifetime bar to possession of firearms, not to mention devastating on the prospects for prosperity in a modern world.[28] In a state court system hostile to the Second Amendment, justice further delayed is further denied, especially with severe consequences for the tens of thousands of the Commonwealths most law-abiding population.

Amicus Commonwealth Second Amendment urges this court to address the issue of lower courts applying analyses that fail to meet the test articulated in Heller. A large number of otherwise

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[27] See Mass. Gen. Laws, ch. 140, §129C; There is no registration system in Massachusetts, though there is a transaction tracking system where any seller in Massachusetts who sells to a Massachusetts resident, or Massachusetts resident who purchases outside the state, is required to file notice with the state relevant characteristics of the sale/purchase.

[28] See also, *Ewald, Alec C.*, Barbers, Caregivers, And The "Disciplinary Subject": Occupational Licensure For People With Criminal Justice Backgrounds In The United States, 46 Fordham Urb. L.J. 719.

law-abiding gunowners in the Commonwealth of Massachusetts face crippling criminal penalties for conduct they, and most everyone else around the country since 1994, believed was lawful.

The Second Amendment protects all arms that meet the described Discrete Action, Discriminate Effect test, including those arms banned by statute and additionally those covered by the supplemental enforcement notice.

Respectfully submitted,

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